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HOUSE BILL 451

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Patricia A. Lundstrom

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO TAX INCREMENT DEVELOPMENT DISTRICTS; INCREASING THE STATE'S ROLE IN DEVELOPMENT, REGULATION AND OVERSIGHT OF CREATION AND IMPLEMENTATION OF TAX INCREMENT DEVELOPMENT DISTRICTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 5-15-1 NMSA 1978 (being Laws 2006, Chapter 75, Section 1) is amended to read:

"5-15-1. SHORT TITLE.--~~[Sections 1 through 27 of this act]~~ Chapter 5, Article 15 NMSA 1978 may be cited as the "Tax Increment for Development Act"."

Section 2. Section 5-15-4 NMSA 1978 (being Laws 2006, Chapter 75, Section 4) is amended to read:

"5-15-4. RESOLUTION FOR FORMATION OF A DISTRICT.--

A. A tax increment development plan may be approved

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1 by the governing body of the municipality or county within  
2 which tax increment development projects are proposed. Upon  
3 filing with the clerk of the governing body of an approved tax  
4 increment development plan and upon receipt of a petition  
5 bearing the signatures of the owners of at least fifty percent  
6 of the real property located within a proposed tax increment  
7 development area, the governing body may adopt a resolution  
8 declaring its intent to form a tax increment development  
9 district. Prior to the formation of a district, the owner or  
10 developer of the real property located within an area proposed  
11 to be designated as a tax increment development area may enter  
12 into an agreement with the governing body concerning the  
13 improvement of specific property within the district, and that  
14 agreement may be used to establish obligations of the owner or  
15 developer and the governing body concerning the zoning,  
16 subdivision, improvement, impact fees, financial  
17 responsibilities and other matters relating to the development,  
18 improvement and use of real property within the district.

19 B. A governing body may adopt a resolution on its  
20 own motion upon its finding that a need exists for the  
21 formation of a district.

22 C. The resolution to form a district shall include:

23 (1) the area or areas to be included within  
24 the boundaries of the district;

25 (2) the purposes for which the district is to

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1 be formed;

2 (3) a statement that a tax increment  
3 development plan is on file with the clerk of the governing  
4 body and that the plan includes a map depicting the boundaries  
5 of the tax increment development area and the real property  
6 proposed to be included in the area;

7 (4) the rate of any proposed property tax  
8 levy;

9 (5) identification of gross receipts tax  
10 increment and property tax increment financing mechanisms  
11 proposed;

12 (6) identification of gross receipts tax  
13 increments and property tax increments proposed to secure  
14 proposed gross receipts tax increment bonds or property tax  
15 increment bonds;

16 (7) requirement of a public hearing for the  
17 formation of the district and notice of the hearing;

18 (8) a statement that formation of a district  
19 may result in the use of gross receipts tax increments or  
20 property tax increments to pay the costs of construction of  
21 public improvements made by the district; and

22 (9) a reference to the Tax Increment for  
23 Development Act.

24 D. A resolution may direct that, prior to holding a  
25 hearing on formation of a district, petitioners for the

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1 formation of a district prepare a study of the feasibility, the  
2 financing and the estimated costs of improvements, services and  
3 benefits to result from the formation of the proposed district.  
4 The governing body may require those petitioners to deposit  
5 with the clerk or treasurer of the governing body an amount  
6 equal to the estimated costs of conducting the study and other  
7 estimated formation costs. The deposit shall be reimbursed  
8 from the proceeds from the sale of bonds issued by the tax  
9 increment development district if the district is formed and if  
10 gross receipts tax increment bonds or property tax increment  
11 bonds are issued by that district pursuant to the Tax Increment  
12 for Development Act.

13 E. A resolution adopted pursuant to this section  
14 shall direct that a public hearing on formation of the district  
15 be scheduled and that notice of the hearing be mailed and  
16 published.

17 F. A governing body of the municipality or county  
18 within which tax increment development projects are proposed  
19 that adopts a resolution to form a district shall notify the  
20 secretary of taxation and revenue, the secretary of finance and  
21 administration and the director of the legislative finance  
22 committee of the governing body's action within ten days  
23 following the date on which the resolution was adopted. A copy  
24 of the adopted resolution shall be included in the notice sent  
25 pursuant to this subsection. All resolution materials,

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1 including fiscal and economic studies, shall also be available  
2 electronically to the public."

3 Section 3. Section 5-15-6 NMSA 1978 (being Laws 2006,  
4 Chapter 75, Section 6) is amended to read:

5 "5-15-6. NOTICE OF PUBLIC HEARING.--

6 A. Upon adoption of a resolution indicating an  
7 intent to form a tax increment development district, a  
8 governing body shall set a date no sooner than thirty days and  
9 no later than sixty days after the adoption of the resolution  
10 for a public hearing regarding the formation of the district.

11 B. Notice of the hearing shall be provided by the  
12 governing body by:

13 (1) publication once each week for two  
14 consecutive weeks in a newspaper of general circulation in the  
15 municipality or county in which the proposed district is  
16 located;

17 (2) posting in a prominent location on  
18 property located within the proposed tax increment development  
19 area for fourteen days prior to the hearing; and

20 (3) written notice via registered or certified  
21 United States mail, postage prepaid, no later than ten days  
22 prior to the hearing to:

23 (a) all owners of real property within  
24 the proposed tax increment development area [~~no later than ten~~  
25 ~~days prior to the hearing~~]; and

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1 preceding or at any time following the adoption of the  
2 resolution. The clerk of the governing body shall publish a  
3 copy of the notice and resolution summary at least twice in a  
4 newspaper of general circulation in the municipality or county  
5 in which the proposed tax increment development district is  
6 located. The clerk of the governing body shall obtain an  
7 affidavit from that newspaper after each publication is made.  
8 The clerk of the governing body shall cause the affidavits to  
9 be placed in the official records of the municipality or  
10 county. The affidavits are conclusive evidence of the mailing  
11 and publishing of notice. Notice shall not be held invalid for  
12 failure of delivery to the addressee.

13 E. A clerk of a governing body who is informed of a  
14 transfer of ownership of real property within a proposed  
15 district and who obtains the name and address of the current  
16 property owner shall mail a copy of the notice and resolution  
17 as soon as practicable after learning of the transfer."

18 Section 4. Section 5-15-9 NMSA 1978 (being Laws 2006,  
19 Chapter 75, Section 9) is amended to read:

20 "5-15-9. FORMATION OF A DISTRICT.--

21 A. If the formation of the tax increment  
22 development district is approved by a majority of the voters  
23 casting votes at the election, or if an election is held by  
24 vote of the owners of property within the district or proposed  
25 district, the governing body shall deliver a copy of the

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1 resolution ordering formation of the tax increment development  
2 district to each of the following persons or entities:

3 (1) the county assessor and the clerk of the  
4 county in which the district is located;

5 (2) the school district within which any  
6 portion of the property located within a tax increment  
7 development area lies;

8 (3) any other taxing entities within which any  
9 portion of the property located within a tax increment  
10 development area lies;

11 (4) the taxation and revenue department; ~~and~~

12 (5) the local government division of the  
13 department of finance and administration; and

14 (6) the director of the legislative finance  
15 committee.

16 B. A notice of the formation showing the number and  
17 date of the resolution and giving a description of the land  
18 included in the district shall be recorded with the clerk of  
19 the county in which the district is located.

20 C. A tax increment development district shall be a  
21 political subdivision of the state, separate and apart from a  
22 municipality or county."

23 Section 5. Section 5-15-10 NMSA 1978 (being Laws 2006,  
24 Chapter 75, Section 10) is amended to read:

25 "5-15-10. GOVERNANCE OF THE DISTRICT.--

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1           A. Following formation of a tax increment  
2 development district, a district board shall administer in a  
3 reasonable manner the implementation of the tax increment  
4 development plan as approved by the governing body.

5           B. The district shall be governed by the governing  
6 body that adopted a resolution to form the district or by a  
7 five-member board composed of four members appointed by that  
8 governing body; provided, however, that the fifth member of the  
9 five-member board is the secretary of finance and  
10 administration or the secretary's designee with full voting  
11 privileges.

12           C. [~~Three~~] Two of the appointed directors shall  
13 serve an initial term of six years. Two of the appointed  
14 directors shall serve an initial term of four years. The  
15 resolution forming the district shall state which directors  
16 shall serve four-year terms and which shall serve six-year  
17 terms. If a vacancy occurs on the district board because of  
18 the death, resignation or inability of the director to  
19 discharge the duties of the director, the governing body shall  
20 appoint a director to fill the vacancy, and the director shall  
21 hold office for the remainder of the unexpired term until a  
22 successor is appointed or elected.

23           D. A director may be a director of more than one  
24 district.

25           E. In the case of an appointed board of directors

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1 that is not the governing body, at the end of the appointed  
2 directors' initial terms, the board shall hold an election of  
3 new directors by majority vote of owners and qualified resident  
4 electors in accordance with the Tax Increment for Development  
5 Act. Each owner shall have the number of votes or portion of  
6 votes equal to the number of acres or portion of acres rounded  
7 upward to the nearest one-fifth of an acre owned in the  
8 district by that owner."

9 Section 6. Section 5-15-15 NMSA 1978 (being Laws 2006,  
10 Chapter 75, Section 15) is amended to read:

11 "5-15-15. TAX INCREMENT FINANCING--GROSS RECEIPTS TAX  
12 INCREMENT.--

13 A. Notwithstanding any law to the contrary, but in  
14 accordance with the provisions of the Tax Increment for  
15 Development Act, a tax increment development plan, as  
16 originally approved or as later modified, may contain a  
17 provision that a portion of certain gross receipts tax  
18 increments collected within the tax increment development area  
19 after the effective date of approval of the tax increment  
20 development plan may be dedicated for the purpose of securing  
21 gross receipts tax increment bonds pursuant to the Tax  
22 Increment for Development Act.

23 B. As to a district formed by a municipality, a  
24 portion of any of the following gross receipts tax increments  
25 may be paid by the state directly into a special fund of the

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1 district to pay the principal of, the interest on and any  
2 premium due in connection with the bonds of, loans or advances  
3 to, or any indebtedness incurred by, whether funded, refunded,  
4 assumed or otherwise, the authority for financing or  
5 refinancing, in whole or in part, a tax increment development  
6 project within the tax increment development area:

7 (1) municipal gross receipts tax authorized  
8 pursuant to the Municipal Local Option Gross Receipts Taxes  
9 Act;

10 (2) municipal environmental services gross  
11 receipts tax authorized pursuant to the Municipal Local Option  
12 Gross Receipts Taxes Act;

13 (3) municipal infrastructure gross receipts  
14 tax authorized pursuant to the Municipal Local Option Gross  
15 Receipts Taxes Act;

16 (4) municipal capital outlay gross receipts  
17 tax authorized pursuant to the Municipal Local Option Gross  
18 Receipts Taxes Act;

19 (5) municipal regional transit gross receipts  
20 tax authorized pursuant to the Municipal Local Option Gross  
21 Receipts Taxes Act;

22 (6) an amount distributed to municipalities  
23 pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA 1978; and

24 (7) the state gross receipts tax.

25 C. As to a district formed by a county, all or a

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1 portion of any of the following gross receipts tax increments  
2 may be paid by the state directly into a special fund of the  
3 district to pay the principal of, the interest on and any  
4 premium due in connection with the bonds of, loans or advances  
5 to or any indebtedness incurred by, whether funded, refunded,  
6 assumed or otherwise, the district for financing or  
7 refinancing, in whole or in part, a tax increment development  
8 project within the tax increment development area:

9 (1) county gross receipts tax authorized  
10 pursuant to the County Local Option Gross Receipts Taxes Act;

11 (2) county environmental services gross  
12 receipts tax authorized pursuant to the County Local Option  
13 Gross Receipts Taxes Act;

14 (3) county infrastructure gross receipts tax  
15 authorized pursuant to the County Local Option Gross Receipts  
16 Taxes Act;

17 (4) county capital outlay gross receipts tax  
18 authorized pursuant to the County Local Option Gross Receipts  
19 Taxes Act;

20 (5) county regional transit gross receipts tax  
21 authorized pursuant to the County Local Option Gross Receipts  
22 Taxes Act; [and]

23 (6) the [~~state gross receipts tax~~] amount  
24 distributed to counties pursuant to Section 7-1-6.47 NMSA 1978;

25 and

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1                                    (7) the state gross receipts tax.

2                    D. The gross receipts tax increment generated by  
3 the imposition of municipal or county local option gross  
4 receipts taxes specified by statute for particular purposes may  
5 nonetheless be dedicated for the purposes of the Tax Increment  
6 for Development Act if intent to do so is set forth in the tax  
7 increment development plan approved by the governing body, if  
8 the purpose for which the increment is intended to be used is  
9 consistent with the purposes set forth in the statute  
10 authorizing the municipal or county local option gross receipts  
11 tax.

12                    E. An imposition of a gross receipts tax increment  
13 attributable to the imposition of a gross receipts tax by a  
14 taxing entity may be dedicated for the purpose of securing  
15 gross receipts tax increment bonds with the agreement of the  
16 taxing entity, evidenced by a resolution adopted by a majority  
17 vote of that taxing entity. A taxing entity shall not agree to  
18 dedicate for the purposes of securing gross receipts tax  
19 increment bonds more than seventy-five percent of its gross  
20 receipts tax increment attributable to the imposition of gross  
21 receipts taxes by the taxing entity. A resolution of the  
22 taxing entity to dedicate a gross receipts tax increment or to  
23 increase the dedication of a gross receipts tax increment shall  
24 become effective only on January 1 or July 1 of the calendar  
25 year.

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1           F. An imposition of a gross receipts tax increment  
2           attributable to the imposition of the state gross receipts tax  
3           within a district less the distributions made pursuant to  
4           Section 7-1-6.4 NMSA 1978 may be dedicated for the purpose of  
5           securing gross receipts tax increment bonds with the agreement  
6           of the state board of finance, evidenced by a resolution  
7           adopted by a majority vote of the state board of finance. The  
8           state board of finance shall not agree to dedicate more than  
9           seventy-five percent of the gross receipts tax increment  
10          attributable to the imposition of the state gross receipts tax  
11          within the district. The resolution of the state board of  
12          finance shall become effective only on January 1 or July 1 of  
13          the calendar year and shall find that:

14                       (1) the state board of finance has reviewed  
15                       the request for the use of the state gross receipts tax;

16                       (2) based upon review by the state board of  
17                       finance of the applicable tax increment development plan, the  
18                       dedication by the state board of finance of a portion of the  
19                       gross receipts tax increment attributable to the imposition of  
20                       the state gross receipts tax within the district for use in  
21                       meeting the required goals of the tax increment plan is  
22                       reasonable and in the best interest of the state; and

23                       (3) the use of the state gross receipts tax is  
24                       likely to stimulate the creation of jobs, economic  
25                       opportunities and general revenue for the state through the

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1 addition of new businesses to the state and the expansion of  
2 existing businesses within the state.

3 G. The governing body of the jurisdiction in which  
4 a tax increment development district has been established shall  
5 timely notify the assessor of the county in which the district  
6 has been established, the taxation and revenue department and  
7 the local government division of the department of finance and  
8 administration when:

9 (1) a tax increment development plan has been  
10 approved that contains a provision for the allocation of a  
11 gross receipts tax increment;

12 (2) any outstanding bonds of the district have  
13 been paid off; and

14 (3) the purposes of the district have  
15 otherwise been achieved."

16 Section 7. Section 5-15-16 NMSA 1978 (being Laws 2006,  
17 Chapter 75, Section 16) is amended to read:

18 "5-15-16. BONDING AUTHORITY--GROSS RECEIPTS TAX  
19 INCREMENT.--

20 A. A district may issue gross receipts tax  
21 increment revenue bonds, the pledged revenue for which is a  
22 gross receipts tax increment, for any one or more of the  
23 purposes authorized by the Tax Increment for Development Act.

24 B. A district may pledge irrevocably any or all of  
25 a gross receipts tax increment received by the district to the

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1 payment of the interest on and principal of the gross receipts  
2 tax increment bonds for any of the purposes authorized in the  
3 Tax Increment for Development Act. A law that imposes or  
4 authorizes the imposition of a municipal or county gross  
5 receipts tax or that affects the municipal or county gross  
6 receipts tax shall not be repealed, amended or otherwise  
7 directly or indirectly modified in any manner to adversely  
8 impair any outstanding gross receipts increment bonds that may  
9 be secured by a pledge of any municipal or county gross  
10 receipts tax increment, unless those outstanding bonds have  
11 been discharged in full or provision has been fully made for  
12 those bonds.

13 C. Revenues in excess of the annual principal and  
14 interest due on gross receipts tax increment bonds secured by a  
15 pledge of gross receipts tax increment revenue may be  
16 accumulated in a debt service reserve account; provided that  
17 revenue in excess of that needed to service bonds issued  
18 pursuant to the tax increment development plan and to provide a  
19 sufficient level of reserves, as determined by the district  
20 board of the district in consultation with the New Mexico  
21 finance authority, shall be returned to the taxing authority  
22 pursuant to procedures established by the taxing authority.

23 The district may appoint a commercial bank trust department to  
24 act as paying agent or trustee of the gross receipts tax  
25 increment revenue and to administer the payment of principal of

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1 and interest on the bonds.

2 D. Except as otherwise provided in the Tax  
3 Increment for Development Act, gross receipts tax increment  
4 bonds:

5 (1) may have interest, principal value or any  
6 part thereof payable at intervals or at maturity as may be  
7 determined by the governing body;

8 (2) may be subject to a prior redemption at  
9 the district's option at a time and upon terms and conditions,  
10 with or without the payment of a premium, as determined by the  
11 district board;

12 (3) may mature at any time not exceeding  
13 twenty-five years after the date of issuance;

14 (4) may be serial in form and maturity, may  
15 consist of one bond payable at one time or in installments or  
16 may be in another form determined by the district board;

17 (5) shall be sold for cash at, above or below  
18 par and at a price that results in a net effective interest  
19 rate that does not exceed the maximum permitted by the Public  
20 Securities Act and the Public Securities Short-Term Interest  
21 Rate Act; and

22 (6) may be sold at public or negotiated sale.

23 E. At a regular or special meeting, the district  
24 board may adopt a resolution that:

25 (1) declares the necessity for issuing gross

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1 receipts tax increment bonds;

2 (2) authorizes the issuance of gross receipts  
3 tax increment bonds by an affirmative vote of a majority of all  
4 the members of the district board; and

5 (3) designates the sources of gross receipts  
6 taxes or portions thereof to be pledged to the repayment of the  
7 gross receipts tax increment bonds."

8 Section 8. Section 5-15-21 NMSA 1978 (being Laws 2006,  
9 Chapter 75, Section 21) is amended to read:

10 "5-15-21. APPROVAL REQUIRED FOR ISSUANCE OF BONDS AGAINST  
11 STATE GROSS RECEIPTS TAX INCREMENTS.--In addition to all other  
12 requirements of the Tax Increment for Development Act, prior to  
13 a district board issuing bonds against a gross receipts tax  
14 increment attributable to the imposition of the state gross  
15 receipts tax within a district:

16 A. the New Mexico finance authority shall review  
17 the proposed issuance of the bonds and determine that the  
18 proceeds of the bonds will be used for a tax increment  
19 development project in accordance with the district's tax  
20 increment development plan and present the proposed issuance of  
21 the bonds to the legislature for approval; and

22 B. the issuance of the bonds and the maximum amount  
23 of bonds to be issued shall be specifically authorized by law."

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